

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9831 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

ABIDHUSAIN ALIAS DANGO

IQBALBHAI ALIAS IBRAHIMBHAI

Versus

COMMISSIONER OF POLICE

Appearance:

MR SATISH R PATEL for Petitioner

Mr. Samir Dave, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 20/09/1999

ORAL JUDGEMENT

Heard learned Advocate Mr. Satish R. Patel for the petitioner and learned A.G.P. Mr. Samir Dave for the respondents nos.1,2 and 3.

By filing this petition under Article 226 of the Constitution of India, the petitioner has prayed for an

appropriate writ, order or direction to quash and set aside the detention order dated 28-10-1998 passed by the respondent no.1-Police Commissioner, Ahmedabad City against the petitioner in exercise of powers conferred under Sec 3(1) of the Gujarat Prevention of Antisocial Activities Act, 1985("PASA" for short).

The petitioner has also prayed to set him at liberty forthwith.

The petitioner has produced the impugned order of detention and committal order at Annexures "A" & "B" while the grounds of detention are produced at Annexure "C".

The said grounds of detention indicate that three criminal cases have been registered against the petitioner on 1-8-1998, 22-8-1998 and 30-8-1998 at Nashabandi Police Station, Dani Limda Police Station and Nashabandi Police Station respectively for the offences made punishable under the Prohibition Act. That all the three cases are pending investigation.

The grounds of detention further indicate that countrymade liquor as well as foreign liquor has been seized from the possession of the petitioner and the petitioner has been found to supply such countrymade liquor illegally. That as such, the petitioner is a "bootlegger" within the meaning of Section 2(b) of "PASA" and his activity is prejudicially affecting the maintenance of public order. That three witnesses on assurance of anonymity have supplied information against the petitioner which also discloses that the petitioner has been dealing as a bootlegger and is causing violence thus creating an atmosphere of terror. That persons who refused to agree with the illegal demand of the petitioner are being severely beaten and the members of the public residing in the vicinity have to run away from the place or remain indoors by keeping the doors of their houses closed. That resort to general provisions of law are insufficient to prevent the petitioner from continuing his illegal and antisocial activities, and as such, the impugned order is passed.

The petitioner has challenged the impugned order on numerous grounds. However, learned Advocate Mr. S.R. Patel appearing for the petitioner has restricted the contest to the first point of challenge and has urged that representation made by the petitioner dated 27-7-1999 has been received by the Home Secretary (Special) on 28-7-1999. That vide said representation,

the petitioner has requested the authority to furnish report of chemical analyzer in respect to material alleged to be countrymade liquor seized from the petitioner by the police authority in three different cases and has also claimed statements of witnesses, namely, P.U. Ravol, Rameshchandra Hemchandra, Baldevishnh etc. who were the members of the raiding party in the said incidents for which criminal cases are registered against the petitioner. The petitioner has raised a specific plea by amended paragraph 15(A) for non supply of such statements by the authority. That though respondent no.1 has filed affidavit-in-reply, it appears that except supplying copy of the report of chemical analyzer in respect to Criminal Case no.151/98 registered at Nashabandi Police Station, no other documents are supplied to the petitioner. The affidavit is devoid of any explanation as to why no document as claimed by the petitioner have been supplied to the petitioner.

That the apex Court as well as various High Courts have time and again observed that Article 22(5) of the Constitution of India confers a valuable fundamental right to a person to make effective representation violation of which makes the action of Executive illegal.

In the instant case, it is not in dispute that despite the receipt of representation made by the petitioner dated 27-7-1999, the statements of witnesses as claimed by the petitioner have not been supplied to the petitioner either by the State Government or by the detaining authority alongwith the communication addressed to the petitioner dated 16-8-1999 informing the petitioner that his representation has been rejected. In view of the same, the continued detention of the petitioner has become illegal and on that count, the petition deserves to be allowed.

That as the petitioner succeeds on the said sole count, it is not necessary to dilate the issue by deciding the other points raised by the petitioner.

On the basis of the aforesaid discussion, the petition is allowed. The impugned order dated 28-10-1998 passed by the respondent no.1-Commissioner of Police, Ahmedabad City, against the petitioner is hereby quashed and set aside. The petitioner-detenu-Abidhusain alias Dango Iqbalbhai alias Ibrahimbhai alias Mohammadhusain Luhar(Muslim) is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly.

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